

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Limited Modification of)	WC Docket No. 04-77
LATA Boundaries to Provide ELCS)	
Between the Jackson Exchange)	
and the Tyler Exchange)	

MEMORANDUM OPINION AND ORDER

Adopted: June 17, 2004

Released: June 17, 2004

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On March 5, 2004, Southwestern Bell Telephone, L.P. d/b/a SBC Texas (SBC), pursuant to section 3(25) of the Communications Act of 1934, as amended (the Act),¹ filed a petition (SBC Petition) to provide two-way, non-optional, flat-rated expanded local calling service (ELCS) between certain exchanges in Texas.² The SBC Petition requests a limited modification of local access and transport area (LATA) boundaries to provide ELCS between SBC's Tyler exchange located in the Longview LATA and Verizon Southwest, Inc.'s (Verizon's) Jackson exchange located in the Dallas LATA, as required by the Public Utility Commission of Texas (Texas Commission).³ We grant SBC's petition for the reasons stated below.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers.⁴ Although intraLATA ELCS routes can be ordered by a state commission,⁵ pursuant to section 3(25)(B) of the Act

¹ See 47 U.S.C. § 153(25). Section 3(25) of the Act defines a LATA as a contiguous geographic area (1) established prior to enactment of the 1996 Act by a Bell Operating Company (BOC) such that no exchange area includes points within more than one metropolitan statistical area, consolidated metropolitan statistical area, or state, except as expressly permitted under the AT&T Consent Decree; or (2) established or modified by a BOC after such date of enactment and approved by the Commission. *Id.*

² See Petition of Southwestern Bell Telephone, L.P. for Modification of a LATA Boundary in Texas, WC Docket No. 04-77 (filed Mar. 5, 2004) (SBC Petition). See *Comments Sought on SBC Texas Petition for Modification of a LATA Boundary in Texas*, WC Docket No. 04-77, Public Notice, DA No. 04-766 (rel. Mar. 23, 2004). We note that all of the exchanges are in Texas.

³ See SBC Petition at 2, Attachment A; Public Utility Commission of Texas, *Petition for Expanded Local Calling Service from the Jackson Exchange to the Exchange of Tyler*, Docket No. 27761, Interim Order (rel. Jan. 5, 2004) (Texas Order).

⁴ The SBC Petition was initiated by subscribers of Verizon's Jackson exchange. See SBC Petition, Attachment A. The Jackson exchange has approximately 1,597 access lines. See *id.* at 2. Adjacent to the Jackson exchange, SBC's Tyler exchange has 95,705 access lines. See *id.*

⁵ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission's) exclusive jurisdiction.⁶ Applying a two-part test, the Commission will grant a request for a LATA boundary modification where: (1) the applicant proves that the requested LATA modification would provide a significant public benefit; and (2) granting the petition would not remove the BOC's incentive to receive authority to provide in-region, interLATA service pursuant to section 271.⁷ The SBC Petition proposes to establish flat-rate, two-way, non-optional ELCS, and is accompanied by an order issued by the Texas Commission approving the ELCS request.⁸

4. Only one commenter, F. Cary Fitch d/b/a Fitch Affordable Telecom (Fitch), opposes SBC's petition.⁹ Fitch argues that the Commission should deny SBC's Petition because ELCS as authorized by the Texas Commission is anticompetitive and discriminatory against CMRS providers, violates sections 201(a), 202(a), 251(a), and 251(b)(3) of the Act, and usurps the Commission's numbering authority and violates its numbering rules. Fitch also contends that the proposed LATA modification would be inconsistent with Commission precedent because the Texas Commission has characterized the ELCS offering at issue as something other than "traditional local service."¹⁰ In reply, SBC urges the Commission to reject Fitch's arguments because the Texas Commission's characterization of ELCS as a "special arrangement" does not make it something other than a "traditional local service," and these issues reach beyond the scope of this limited LATA modification proceeding.¹¹

III. DISCUSSION

5. We conclude that SBC's petition satisfies the Commission's two-part test. Applying the first prong of the test, we find that SBC has shown that a public benefit would result from the ELCS because a sufficient community of interest exists among the affected exchanges to justify their being treated as a local calling area.¹² In reaching this finding, we note that SBC proposes to offer traditional flat-rate, two-way, non-optional ELCS,¹³ which the Commission has determined to be consistent with the public interest.¹⁴ Further,

⁶ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, NSD-L-97-6, Memorandum Opinion and Order, 14 FCC Rcd 14392-99 (1999).

⁷ *See SBC Telecom, Inc. Petition for Modification of Certain LATA Boundaries in Ohio*, File No. NSD-L-00-25, Memorandum Opinion and Order, 18 FCC Rcd 26398 (2003), paras. 2, 6-8.

⁸ SBC Petition at 1; Texas Order at 3.

⁹ Fitch is a provider of CMRS services in several parts of Texas. *See* Fitch Comments at 1.

¹⁰ Fitch Comments at 5-7.

¹¹ *See* SBC Reply Comments at 1-2. We note that these issues have been raised in other Commission proceedings. *See, e.g., Petition of ASAP Paging, Inc. for Preemption of the Public Utility Commission of Texas Concerning Retail Rating of Local Calls to CMRS Carriers*, WC Docket No. 04-06, Public Notice, 19 FCC Rcd 936 (2004) (*ASAP Paging Public Notice*).

¹² *See Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, CC Docket 96-159, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10653 (1997) (*1997 LATA Order*).

¹³ SBC Petition at 1.

¹⁴ *See, e.g., Bell-Atlantic-Virginia, Inc. Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling service (ELCS) at Various Locations*, File No. NSD-L-97-45, Memorandum Opinion and Order, 13 FCC Rcd 11042 (1998); *Bell Atlantic-Virginia Petition for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service (ELCS)*, File No. NSD-L-98-143, Memorandum Opinion and Order, 14 FCC Rcd 4371 (1999).

the Texas Commission conducted an extensive community of interest analysis prior to approving the ELCS.¹⁵ We find it a persuasive indicator of a community of interest that SBC's petition satisfies all of the Texas Commission's community of interest criteria.¹⁶ We find, therefore, that the petition is based on a significant community of interest, and thus satisfies the first prong of the Commission's two-part test.

6. SBC also satisfies the second prong of the two-part test because it has already opened its market to competition in Texas and, accordingly, has been granted authority under section 271 to offer interLATA service in that state.¹⁷ Thus, granting the requested modification has no bearing on SBC's incentive to receive such authority. Moreover, we conclude that the LATA boundary modification would have a minimal effect upon competition because modification of the LATA boundary would affect only a small number of access lines.¹⁸ As a result, we believe that granting SBC's petition serves the public interest by permitting a minor LATA modification where such a modification is necessary to meet the needs of local subscribers. Accordingly, we approve SBC's petition for limited LATA boundary modification.

7. We are not persuaded by Fitch's arguments to reject SBC's petition. Fitch is incorrect when it asserts that the Texas Commission has found ELCS service to be something other than a "traditional local service," and therefore not consistent with the test applied by the FCC for modification of LATA boundaries.¹⁹ We agree with SBC that the Texas Commission's characterization of ELCS as a "special arrangement" does not make it something other than a "traditional local service," and therefore Fitch has no basis to substantiate its claim.²⁰ The Commission has consistently characterized flat-rate, non-optional ELCS service as traditional local service for the purposes of reviewing petitions for LATA boundary modification. We note that SBC proposes to provide flat-rate, non-optional service and, as discussed in detail above, SBC's Petition satisfies the Commission's two-part test for reviewing petitions for LATA boundary modifications.²¹

8. Moreover, we do not believe that this is the appropriate proceeding to address complex issues raised by Fitch regarding the impact of ELCS on interconnecting carriers.²² We note that these issues

¹⁵ See SBC Petition at Attachment A.

¹⁶ See *id.* We also note that no rate increase will result directly from the ELCS at issue. See SBC Petition at 2. Of the total number of Jackson exchange customers that responded to customer polls, 70.03% voted in favor of ELCS to the Tyler exchange. See *id.*

¹⁷ *Application by SBC Communications, Inc. for Authorization to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000).

¹⁸ As noted previously, the Jackson exchange has 1,597 access lines, and the Tyler exchange has 95,705 access lines. See SBC Petition at 2. For the purposes of ELCS petitions, we generally consider the number of access lines from customers in the smaller exchange who seek to reach businesses and services in the other exchange. This exchange usually generates the majority of calls between the two exchanges. See *Southwestern Bell Petitions for Limited Modifications of LATA Boundaries to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 02-134, Memorandum Opinion and Order, 17 FCC Rcd 25540 (2002). Therefore, for the purposes of reviewing these modifications and based on the Texas Commission's community of interest statement, we consider Verizon's 1,597 access lines in the Jackson exchange, a number well within Commission precedent. See SBC Petition at 3; *April 1998 LATA Order*, 13 FCC Rcd at 11046, para. 8 (granting an ELCS petition affecting over 30,000 access lines).

¹⁹ Fitch Comments at 2 (citing *1997 LATA Order*).

²⁰ See SBC Reply Comments at 1, n.2 (citing *United States v. Western Electric Company, Inc.*, No. 82-0192, slip. op. at 4 (D.D.C. May, 18, 1993); *1997 LATA Order*). SBC is providing standard ELCS that is flat-rate and non-optional between the Jackson and Tyler exchanges in Texas. See SBC Reply Comments at 1.

²¹ See SBC Reply Comments at 1; see also *supra* paras. 4-5.

²² See, e.g., *In the Matter of Verizon Petitions for Limited Modifications of LATA Boundary to Provide Expanded Local Calling Service (ELCS)*, WC Docket No. 96-159, 17 FCC Rcd 25,207, 25,209, n.15 (2002)

(continued...)

have been raised in other Commission proceedings.²³ Accordingly, we decline to address these issues in this item and defer our consideration, without prejudice, to more appropriate proceedings.²⁴ Our decision to rely on the Texas Commission's community of interest findings with respect to wireline subscribers in these exchanges is not intended to endorse any decisions made by the Texas Commission with respect to wireless subscribers.

9. We grant this relief solely for the limited purpose of allowing SBC to provide ELCS between the specific exchanges or geographic areas identified in this request. The LATA boundary is not modified to permit SBC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, non-optional ELCS between the specified exchanges will be treated as intraLATA service.²⁵

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of Southwestern Bell Telephone, L.P. d/b/a SBC Texas for a LATA boundary modification for the limited purpose of providing two-way, traditional, non-optional ELCS at specific locations in Texas, identified in WC Docket No. 04-77, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division
Wireline Competition Bureau

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(rejecting a request to deny a LATA modification petition based on an unbundled network element rate issue more appropriately addressed in another proceeding); *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, 17 FCC Rcd 9018, 9138-39, para. 208 (2002) (deferring consideration of issues raised by commenters to a more appropriate rulemaking proceeding).

²³ See, e.g., *ASAP Paging Public Notice*, 19 FCC Rcd 936.

²⁴ See *id.*

²⁵ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply. See, e.g., 47 U.S.C. § 272(f)(1) (stating that a BOC is required to provide interLATA services through a separate affiliate for three years after the date on which it is authorized to provide in-region, interLATA telecommunications services).